MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-836

PAUL D. GOTWEIN and STATE OF MARYLAND COMMISSION ON HUMAN RELATIONS, *Petitioners*

v.

EASTON PUBLISHING CO., *Respondent*

To the Court of Appeals of Maryland

PETITIONERS' REPLY BRIEF

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INDEX

Page

ARGUMENT

The Maryland Courts' Action Foreclosed Any Monetary Relief Under State Law for Victims of Unlawful Discrimination 1

CONCLUSION 4

APPENDIX I—Excerpts From Maryland Civil Rights Law, Art. 49B, Md. Code Ann. (1972 Repl. Vol., 1974 Supp.) 1a

CITATIONS

CASES:

Arnett v. Seattle General Hospital, 65 Wash. 2d 22, 295 P. 2d 303 (1964) 2

City of Highland Park v. Fair Employment Practices Commission, 364 Mich. 508, 111 N.W. 2d 297 (1961) 2

Sullivan v. Little Hunting Park, 396 U.S. 229 (1968) .. 3

STATUTORY MATERIALS:

Art. 49B, Md. Code Ann. §§ 1 *et seq.* 2

Art. 49B, Md. Code Ann. §§ 12-15 2

National Labor Relations Act, 29 U.S.C. § 160 (1970) 2

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ARGUMENT

The Maryland Court's Action Foreclosed Any Monetary Relief Under State Law for Victims of Unlawful Discrimination.

Respondent advances several misleading and incorrect assertions: that a private right of action exists under state law to obtain monetary relief from unlawful discrimination, and that the Maryland court's action denying Commission ordered relief to Petitioner Gutwein did not affect his alleged private right of action under state law.

These incorrect assertions are plainly refuted by an examination of the Maryland Civil Rights law and the Maryland court decision challenged here. The law manifests no private right of action, express or implied. The court decision held that not only was the Commission without authority to order monetary relief but no monetary relief for unlawful discrimination was authorized under the Maryland Civil Rights law.

The Maryland Civil Rights law creates the only state cause of action for unlawful discrimination. *See*, Art. 49B, Md. Code Ann. §§ 1 *et seq.* (1972 Repl. Vol., 1974 Supp.). This law specifies that an administrative agency enforcement scheme is the *exclusive* procedure to resolve charges of unlawful discrimination. *See*, Art. 49B, Md. Code Ann. §§ 12-15 (1972 Repl. Vol., 1974 Supp.) (Respondent's Brief, App. A, pp. 13-14; Petitioner's App. I, *infra*, page). This exclusive procedure is similar to the exclusive procedure established by Congress under the National Labor Relations Act, *compare* 29 U.S.C. § 160 (1970) *with* Art. 49B, Md. Code Ann. §§ 12-15 (1972 Repl. Vol., 1974 Supp.). Indeed, agencies like the Petitioner Commission have been held to be exclusive remedial agencies patterned in their form and operation after the National Labor Relations Board. *See, City of Highland Park* v. *Fair Employment Practices Commission*, 364 Mich. 508, 111 N.W. 2d 297 (1961), *Arnett* v. *Seattle General Hospital*, 65 Wash. 2d 22, 295 P. 2d 503 (1964).

Respondent has failed to demonstrate through any provisions of Maryland law support for its direct right of action theory of recovery for Petitioner Gutwein. Indeed, had such a right existed the Maryland court should have remanded this case to the trial court to afford Petitioner Gutwein an opportunity to seek re-

dress under such a procedure. Failure to so act would amount to the same unconstitutional state action found in *Sullivan* v. *Little Hunting Park*, 396 U.S. 229 (1968). Nevertheless, the fact the Maryland court did not follow such a procedure further illustrates that it is nonexistent.

Even if Respondent was correct in its unsupported assertion that Petitioner Gutwein could bring a separate cause of action in state court seeking monetary relief for unlawful discrimination, the decision by the Court of Appeals of Maryland foreclosed *any* relief to the individual taking that route. The Maryland court's holding clearly states that no monetary relief is authorized under the state civil rights law, Article 49B. In fact, the court decision expressly noted that the Maryland statute is merely prohibitive and authorizes no compensatory relief which runs to the individual. *See*, Petition for Certiorari, App. C, p. 12a. This point is critical since Respondent readily concedes that unconstitutional state action arises from a judicial denial of a remedy when legally protected civil rights are violated. *See*, Respondent's Brief p. 6.

Respondent also argues that Petitioner Gutwein could have sought directly under federal law the relief denied him by the state. This assertion, of course, is no answer to the constitutional challenge upon state action raised here. The state created substantive civil rights seemingly identical to those available under federal law. The state, by establishing the Commission to receive and process complaints, encouraged those persons in the state believing themselves aggrieved to use the state law. Then the state, by the court decision challenged here, denied these persons remedies necessary to properly vindicate their civil rights. Petitioner

Gutwein and others bypassed their rights under federal law believing the state civil rights law afforded them the same constitutional relief available under the federal scheme. The decision of the Maryland court has unconstitutionally left these people without any remedy, state or federal.

CONCLUSION

For the foregoing reasons and those stated in the Petition for Certiorari, the decision of Court of Appeals of Maryland should not stand uncorrected and the Petition should therefore be granted.

Respectfully submitted,

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